

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:  
Gerald FOURNAND *et al.*

Serial No.: 10/598,979

Filed: September 15, 2006

For: OPTICAL LENS HOLDER

Group Art Unit: 2837

Examiner: Unknown

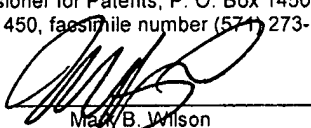
Atty. Dkt. No.: ESSR:124US

Confirmation No.: 2813

**CERTIFICATE OF FACSIMILE TRANSMISSION  
37 C.F.R. § 1.8**

I hereby certify that this correspondence is being transmitted to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA, 22313-1450, facsimile number (571) 273-8300 on the date below:

February 19, 2008  
Date

  
Mark B. Wilson

**RESPONSE TO DECISION MAILED FEBRUARY 12, 2008, REGARDING PETITION  
TO THE DIRECTOR UNDER 37 C.F.R. 1.181 FILED DECEMBER 11, 2007; AND  
RESUBMISSION OF PETITION TO THE DIRECTOR UNDER 37 C.F.R. 1.181**

**ATTN: PCT LEGAL AFFAIRS**

Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Decision mailed February 12, 2008, Applicants respectfully resubmit this petition to the Director under 37 C.F.R. 1.181, together with item (3) set forth in the Decision as having not been submitted, and respectfully request refund of the five-month extension of time fees in the amount of \$2,230.00 paid on December 11, 2007, in connection with the response to the Notification of Insufficient Fees dated May 11, 2007 (the "Notification").

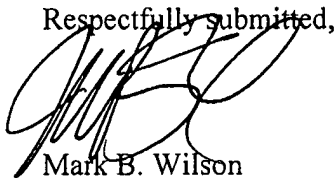
As set forth in Applicants' petition originally filed December 11, 2007, Applicants never received the Notification, as supported by the facts set forth below and as stated in the Declaration of Mark B. Wilson accompanying this Petition, and allege that the Office erred in not mailing the Notification to Applicants' representative.

The non-receipt of the Notification was discovered on November 14, 2007, when support staff in the office of Applicants' representative reviewed the application record of this application in Private PAIR in response to a docketing entry appearing in Applicants' representative's docketing system for "Status Check for First Office Action." At that time, it was discovered that a Notification of Insufficient Fees dated May 11, 2007, appeared in the image file wrapper of this application. Applicants' representative's support staff then reviewed the docketing records for this application and discovered that on May 14, 2007, Applicant's representative received an official Filing Receipt dated May 11, 2007, but did not receive the Notification of Insufficient Fees dated May 11, 2007 (dated the same date as the Filing Receipt, which Applicants' representative did receive). Applicants' representative's docketing staff scans each piece of mail received from the Office as a matter of course, and the scanned images do not contain a copy of the Notification of Insufficient Fees dated May 11, 2007. Applicants' representative's docketing system also does not contain an indication of the receipt of the Notification, as evidenced by the attached copy of the portion of Applicants' representative's printed Docket Report, which is an extract from the firm's master docket database, encompassing July 11, 2007 (which would have been the due date for response to the Notification, had it been received and entered into Applicants' representative's docketing system), showing that there is no entry on July 11, 2007, for Response to Notification of Insufficient Fees for Application No. 10/598,979 (Docket Number ESSR:124US).

Since the basic national stage filing fee and declaration were present on December 15, 2006, the date of entry of this application into the national stage, the only missing requirements to complete the processing of this application were the search fee, examination fee, additional claims fee, and surcharge, which Applicants' representative could have easily supplied within the two-month response period of the Notification, had Applicants' representative actually received the Notification. However, since Applicants' representative did not become aware of the existence of the Notification of Insufficient Fees until the response period was in the fifth month following the initial due date for the response, Applicants were required to pay a five-month extension of time in order to avoid abandonment of the application.

In view of the above, Applicants respectfully submit that the Notification was not mailed to Applicants' representative by the Office and request that the Director refund Applicants' payment of the five-month extension fee in the amount of \$2,230 paid on December 11, 2007, in connection with the Response to Notification of Insufficient Fees filed on that date.

Respectfully submitted,



Mark B. Wilson  
Reg. No. 37,259  
Attorney for Applicant

(Customer No. 32425)  
FULBRIGHT & JAWORSKI L.L.P.  
600 Congress Avenue, Suite 2400  
Austin, Texas 78701  
512.536.3035 (voice)  
512.536.4598 (fax)

Date: February 19, 2008

**Docket Report**

From: 06/29/2007 To: 08/15/2007 For: Wilson Mark B. MW01999

06/29/2007

Due Date	Status	Description	Docket Number	Country	Client	Agent	App No./Date	Reg No. /Date	Attorney(s)
07/10/2007		Request Examination -- 1 Mo. Reminder	AO-UTFK:378JP		UNIVERSITY OF TEXAS HEALTH		2001-514927		Mark B. Wilson Monica A. De La Paz Sherry D. Stowers
		Published		Japan	YAMAMOTO		08/10/2000		
		<b>Title/Mark</b> METHOD FOR INCREASING OPTIC NERVES, CHOROIDAL AND RETINAL BLOOD FLOW TO FACILITATE THE PRESERVATION OF <b>SIGHT</b>							
		<b>Event Text:</b> Agent fax reminder 5/30/07 recommends if any amendments, should do so when req. exam.							
07/10/2007		Expiration	AO-UTSK:090		University of Texas Health Science		07/207,909	4,940,676	Mark B. Wilson David L. Parker Mark B. Wilson
		Issued		United States of America			06/16/1988	07/10/1990	
		<b>Title/Mark</b> CIP OF 067 - CERAMIC COMPOSITIONS AND METHODS EMPLOYING SAME - EVANS <b>expiry</b>							
		<b>Event Text:</b>							
07/11/2007		File References Off Foreign OA in Other Countries	AO-AMBI:098EP		Ambion, Inc.		05760857.2		Mark B. Wilson Mark B. Wilson
		Published		European Patent Office	ET PHELIP		03/18/2005		
		<b>Title/Mark</b> MODIFIED SURFACES AS SOLID SUPPORTS FOR NUCLEIC ACID PURIFICATION							
07/11/2007		Actual publication date	AO-ASUR:007EP		Asuragen, Inc.		05804851.3		Mark B. Wilson Gina N. Shishima Vannezza J. Villarreal Vannezza J. Villarreal
		Application Filed		European Patent Office	SONN & PARTNER		05/31/2005		
		<b>Title/Mark</b> METHODS AND COMPOSITIONS INVOLVING MICRORNA <b>Advance date from 4/11/07 per VJV docket changes.</b>							
		<b>Event Text:</b>							

**Docket Report**

From: 06/29/2007 To: 08/15/2007 For: Wilson Mark B. MW01999

06/29/2007

Due Date	Status	Description	Docket Number	Client	Country	Agent	App No./Date	Reg No. /Date	Attorney(s)
07/11/2007	1 month formal matter-1 month extension		AO-AZTE:015US	Arizona Technology Enterprises, LLC			10/716,293		Mark B. Wilson Mark B. Wilson Patent Prosecution Group
	Application Filed		United States of America				11/17/2003		
<b>Title/Mark THERAPEUTIC BIOCONJUGATES</b>									
<b>Event Text: Corrected Sequence election due</b>									
07/11/2007	Reminder -- Response to OA Due		AO-DFBP:029EP	DFB Pharmaceuticals, Inc.			02749743.7		Mark B. Wilson Michael R. Krawzsenek Lori S. Dee
	Published		European Patent Office				07/02/2002		
<b>Title/Mark MULTIVESCULAR EMULSION TOPICAL DELIVERY SYSTEM</b>									
<b>Event Text: re Response due 8/11/07.</b>									
07/11/2007	Status Check		AO-JOJO:002KR	Jones			10-2007-7009233		Mark B. Wilson Mark B. Wilson Lori S. Dee
	Application Filed		Republic of Korea	CENTRAL INTERNATIONAL LAW FIRM			09/23/2005		
<b>Title/Mark REMOVING CARBON DIOXIDE FROM WASTE STREAMS THROUGH CO-GENERATION OF SYNTHETIC CARBONATE MINERALS</b>									
<b>Event Text: Advance date from 6/11/07 per LSD docket changes.</b>									
<b>Advance date from 6/4/07 per MBW docket changes.</b>									
<b>Rec'd confirmation from agent that voluntary amendment was filed? (delete claims 41-140). Agent ltr 5/4/07 confirms would file.</b>									
07/11/2007	Status Check for First OA		AO-SONN:081US	SONN & PARTNER			10/556,732		Mark B. Wilson Mark B. Wilson Patent Prosecution Group
	Published		United States of America				05/11/2004		
<b>Title/Mark DEVICE FOR DOSING AND MIXING POWDERY MATERIALS</b>									

**Docket Report**

From: 06/29/2007 To: 08/15/2007 For: Wilson Mark B. MW01999

06/29/2007

Due Date	Status	Description	Docket Number	Country	Client	Agent	App No./Date	Reg No. /Date	Attorney(s)
07/11/2007	Notice of Appeal Due	AO-UTSH:251US	UT HEALTH SCIENCE CENT. HOU.				10/021,753		Mark B. Wilson Gina N. Shishima Patent Prosecution Group
	Application Filed	United States of America					10/30/2001		
<b>Title/Mark</b> METHODS AND COMPOSITIONS RELATING TO FORTILIN, AN ANTI-APOPTOTIC MOLECULE, AND MODULATORS OF FORTILIN									
07/11/2007	Notice of Appeal Due - Final Deadline	AO-AMBI:050USC1	Ambion, Inc.				10/354,727		Mark B. Wilson Travis M. Wohlers Patent Prosecution Group
	New case	United States of America					01/30/2003		
<b>Title/Mark</b> METHODS AND REAGENTS FOR PRESERVING RNA IN CELL AND TISSUE S AMPLES									
07/12/2007	FINAL 3 month Office Action-Final Deadline \1	AO-AMBI:050USC1	Ambion, Inc.				10/354,727		Mark B. Wilson Travis M. Wohlers Patent Prosecution Group
	New case	United States of America					01/30/2003		
<b>Title/Mark</b> METHODS AND REAGENTS FOR PRESERVING RNA IN CELL AND TISSUE S AMPLES									
07/12/2007	Request Examination -- 2 Wk. Reminder	AO-AMBI:086JP	Ambion, Inc.				2006-521947		Mark B. Wilson Gina N. Shishima
	Published	Japan	Shimizu, Ph.D.				07/26/2004		
<b>Event Text:</b>									
		Agent fax reminder rec'd 6/27/07.							
		Agent fax reminder rec'd 4/27/07.							
		SDS email 3/20/07 to client for instr.							
		Agent ltr 2/11/07 rec'd 2/9/07 reminder.							

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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February 19, 2008  
Date

  
Mark B. Wilson

**DECLARATION OF MARK B WILSON**  
**IN SUPPORT OF RESUBMISSION OF PETITION UNDER 37 C.F.R. § 1.181**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

I, Mark B. Wilson, declare under penalty of perjury that:

1. I have personal knowledge of the facts below.
2. I am a Partner of Fulbright & Jaworski L.L.P., located in the Austin office at 600 Congress Avenue, Suite 2400, Austin, Texas, 78701.
3. I have been registered to practice before the United States Patent and Trademark Office since 1993, under Registration Number 37,259.
4. I am submitting this declaration in support of the concurrently filed Resubmission of Petition under 37 C.F.R. 1.181 (the "Resubmitted Petition") requesting that the Director

refund the extension fees in the amount of \$2,230.00 submitted with the Response to Notification of Insufficient Fees filed December 11, 2007.

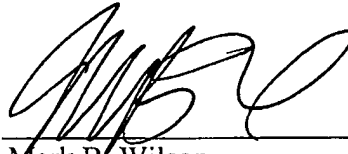
5. I am the attorney who filed this application and am responsible for handling the prosecution of this application.
6. I have reviewed the series of events described in the Petition with the support staff in my office and attest to the accuracy of those events.
7. Our office scans all documents and papers received from the U.S. Patent and Trademark Office into an electronic image file as part of its docketing practice. All such documents are also docketed in the firm's central docketing system and in the responsible attorney's back-up docket.
8. I have reviewed our firm's docketing records for this application and scanned images of mail received from the U.S. Patent and Trademark Office in regard to this application, and attest that our office received the official Filing Receipt for this application dated May 11, 2007, but there are no records that indicate that we received the Notification of Insufficient Fees dated May 11, 2007.
9. I have reviewed a copy of my Docket Report attached to the Resubmitted Petition which encompasses the date for which a response to the Notification of Insufficient Fees dated May 11, 2007, would have been due had it been received – July 11, 2007 – and confirm that our firm's docketing system did not contain an entry on July 11, 2007, for Application No. 10/598,979 (Docket Number ESSR:124US). Had our firm received the Notification of Insufficient Fees mailed May 11, 2007, a docket entry would have appeared on this Docket Report on July 11, 2007, as the due date for response. Note that the portion of the Docket Report that is attached is an extract of the firm's master docketing database, provided to me every two weeks as part of our firm's docketing



procedures, which includes all of the due dates for matters for which I am the responsible attorney for the given period. Since the time of filing of this application, I have always been and continue to be the responsible attorney for this matter; therefore, this particular Docket Report would have contained an entry for July 11, 2007, as the due date for responding to the Notification of Insufficient fees, if that Notification had been received by our offices.

10. To the best of my knowledge after a review of records at our firm, our office never received the Notification of Insufficient Fees dated May 11, 2007. Evidence of receipt of such Notification, if it had been received, would have appeared in the central docketing system of the firm, the attached printed Docket Report, the responsible attorney's back-up docket, and the scanned image file; however, such evidence did not appear in any of these places.
11. All statements made of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued on it.

Signed: \_\_\_\_\_

  
Mark B. Wilson  
Reg. No. 37,259

Dated: February 19, 2008